



**DEPARTMENT OF THE NAVY**  
NAVAL FACILITIES ENGINEERING COMMAND  
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WASHINGTON, DC 20374-5065

IN REPLY REFER TO  
**ACQ/SP-CM**  
27 Mar 2002

**MEMORANDUM FOR NAVFAC ACQUISITION PERSONNEL**

Subj: NAVFAC ACQUISITION SUPPLEMENT (NFAS) CLAUSE CHANGES (02-08)

Encl: (1) CLAUSES

1. Enclosure (1) is forwarded for your information and immediate action, as appropriate. These changes are being electronically incorporated into the NAVFAC Acquisition Supplement (NFAS).

A handwritten signature in black ink, appearing to read "M. F. Howard", is positioned above the printed name.

**MICHAEL F. HOWARD**  
Director, Acquisition Strategic Programs

## **5252.246-9303 CONSEQUENCES OF CONTRACTOR'S FAILURE TO PERFORM REQUIRED SERVICES (MAR 2002)**

The Contractor shall perform all of the contract requirements. The Government will apply one or more of the surveillance methods mentioned below and will deduct an amount from the Contractor's invoice or otherwise withhold payment for unsatisfactory or nonperformed work. The Government reserves the right to change surveillance methods at any time during the contract without notice to the Contractor.

(a) **STATISTICALLY EXTRAPOLATED SURVEILLANCE METHOD.** The Government may apply a statistically extrapolated surveillance method (Random Sampling for Extrapolated Deductions) to any contract requirement to determine Contractor compliance. The defect rate will then be extrapolated to the monthly population to determine the number of unsatisfactorily performed work occurrences. The monthly population is the total number of work occurrences that are required to be performed during the month.

(b) **OTHER SURVEILLANCE METHODS.** The Government may apply other surveillance methods to determine Contractor compliance. These include, but are not limited to, 100% inspection, random sampling without extrapolated deductions, and planned sampling as primary surveillance methods; and incidental inspections and validated customer complaints as supplemental surveillance methods. When using these surveillance methods, deductions will be taken for all observed defects.

(c) **PROCEDURES.** In the case of unsatisfactory or nonperformed work, the Government:

(1) may give the Contractor written notice of observed deficiencies prior to deducting for unsatisfactory or nonperformed work and/or assessing liquidated damages. Such written notice shall not be a prerequisite for withholding payment for nonperformed work. The Government may specify, as provided for below, that liquidated damages can be assessed against the Contractor. Such liquidated damages are to compensate the Government for administrative costs and other expenses resulting from the unsatisfactory or nonperformed work.

(2) may, at its option, allow the Contractor an opportunity to reperform the unsatisfactory or nonperformed work, at no additional cost to the Government. In the case of daily work, corrective action must be completed within \_\_\_\_ hours of notice to the Contractor. In the case of other work, corrective action must be completed within \_\_\_\_ hours of notice. In addition, the Government can assess liquidated damages, as referenced above, in the amount of \_\_\_\_\_ percent of the value of all observed defects. The original inspection results of the Contractor's work will not be modified upon reinspection. However, the Contractor will be paid for satisfactorily reperformed work.

(3) shall deduct from the Contractor's invoice all amounts associated with the unsatisfactory or nonperformed work at the prices set out in the Schedule and any accompanying exhibits or provided by other provisions of this contract, unless the Contractor is required to reperform and satisfactorily complete the work. In addition, the Government can assess liquidated damages, as referenced above, in the amount of \_\_\_\_\_ percent of the value of all observed defects.

(4) may, at its option, perform the work by Government personnel or by other means. The Government will reduce the amount of payment to the Contractor, by the amount paid to any Government personnel (based on wages, retirement and fringe benefits) plus material, or by the actual costs incurred to accomplish the work by other means. If the actual costs cannot be readily determined, the prices set out in the Schedule and any accompanying exhibits will be used as the basis for the deduction. In addition, the Government can assess liquidated damages, as referenced above, in the amount of \_\_\_\_\_ percent of the computed cost.

(d) The Contractor is responsible for maintaining an effective Quality Control Program during the course of the contract. Failure to maintain adequate quality control may result in Termination for Default.

(e) Reperformance by the Contractor does not waive the Government's right to terminate for nonperformance in accordance with FAR clause 52.249-8, "DEFAULT (FIXED-PRICE SUPPLY AND SERVICE)" of Section I and all other remedies for default as may be provided by law.

(f) When WATCHSTANDING SERVICES apply. If the Contractor fails to provide qualified personnel or allows any post to be unmanned for a total of \_\_\_\_\_ minutes in any shift, the Government may assign other persons to perform such work or deduct an amount from the Contractor's invoice as specified below;

(1) When Watchstanding Services are performed by Government employees, deductions shall be computed based on the current Federal Pay Schedule including wages, retirement and fringe benefits of the Government employees (civilian or military) who actually performed the work. In addition, the Government can assess liquidated damages, as referenced above, in the amount of \_\_\_\_\_ percent of the computed cost.

(2) When non-performed Watchstanding Services are obtained under another contract, the Government will deduct from the Contractor's invoice an amount equal to the cost to the Government under that contract. In addition, the Government can assess liquidated damages, as referenced above, in the amount of \_\_\_\_\_ percent of the cost.

(3) If no guard replacement is furnished by the Government and the work is not performed, the Government will deduct from the Contractor's invoice an amount equal to the cost to the Government of having a Government employee perform the work. In addition, the Government can assess liquidated damages, as referenced above, in the amount of \_\_\_\_\_ percent of the computed cost.

(4) The Contractor will be held liable for property losses sustained by the Government as a direct, consequential result of a failure to furnish the required personnel.

(5) Computations of the costs for Government employees to perform work not performed by the Contractor shall be in conformance with FAR 52.222-42, "STATEMENT OF EQUIVALENT RATE FOR FEDERAL HIRES." (End of clause)

#### **5252.246-9304, ESTIMATING THE PRICE OF NONPERFORMED OR UNSATISFACTORY WORK (MAR 2002)**

In accordance with the "CONSEQUENCES OF THE CONTRACTOR'S FAILURE TO PERFORM REQUIRED WORK" clause FAC 5252.246-9303, deductions may be taken for nonperformed or unsatisfactory work. In the event the price of nonperformed or unsatisfactory work cannot be determined from the prices set out in the Schedule and any accompanying exhibits, or on the basis of the actual cost to the Government, estimated methods may be used. Engineered Performance Standards (EPS) or other estimating sources may be utilized to estimate the cost of nonperformed work or the costs which would be incurred in remedying unsatisfactory work. The Government may estimate the cost using wage rate and fringe benefits included in the wage determinations included in the contract. Government estimates of the Contractor's overhead and profit rates, and Government estimates of material costs if applicable. Liquidated damages, to compensate the Government for administrative costs and other expenses resulting from the nonperformed or unsatisfactory performance, will be calculated in accordance with the "CONSEQUENCES OF CONTRACTOR'S FAILURE TO PERFORM REQUIRED WORK" clause. A list of Engineered Performance Standards is contained in Attachment J- [fill-in]. (End of clause)

**5252.216-9310 COMBINATION FIRM FIXED-PRICE/INDEFINITE QUANTITY  
CONTRACT (MAR 2002)**

(a) This is a combination firm fixed-price/indefinite quantity contract for the supplies or services specified, and effective for the period stated in the Schedule and any accompanying exhibits. Work items for the fixed-price portion are identified in the Schedule and any accompanying exhibits and include all work except that identified as Indefinite Quantity. The fixed-price quantities shown in the Schedule and any accompanying exhibits are considered to be accurate estimates for this contract period.

(b) Work items for the indefinite quantity portion of the contract are identified in the Schedule and any accompanying exhibits. The quantities of supplies and services specified in accompanying exhibits and the Schedule as Indefinite Quantity are estimates only and may be ordered by issuance of separate task orders.

(c) Delivery or performance shall be made only as authorized by orders issued in accordance with FAR clause 52.216-18. Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule and any accompanying exhibits up to the contract stated maximum. The minimum guarantee of work to be ordered is the firm fixed-price portion of the contract.

(d) Except for any limitations on quantities in FAR clause 52.216-19, in the Schedule, and in any accompanying exhibits, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(e) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period.  
(End of clause)

**5252.216-9310 COMBINATION FIRM FIXED-PRICE/INDEFINITE QUANTITY  
CONTRACT ALTERNATE I (MAR 2002)**

(a) This is a combination firm fixed-price/indefinite quantity contract for the supplies or services specified, and effective for the period stated in the Schedule and any accompanying exhibits. Work items for the fixed-price portion are identified in the Schedule and any accompanying exhibits and include all work except that identified as Indefinite Quantity. The fixed-price quantities shown in the Schedule and any accompanying exhibits are considered to be accurate estimates for this contract period.

(b) Work items for the indefinite quantity portion of the contract are identified in the Schedule and any accompanying exhibits. The quantities of supplies and services specified in the Schedule and any accompanying exhibits are estimates only and may be ordered by issuance of separate task orders.

(c) Delivery or performance shall be made only as authorized by task orders issued in accordance with the ORDERING clause. . The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule and any accompanying exhibits up to the contract stated maximum. The minimum guarantee of work to be ordered is (fill-in)% of the total estimated quantity.

(d) Except for any limitations on quantities in FAR clause 52.216-19, in the Schedule, and any accompanying exhibits, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(e) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period. (End of clause)

#### **5252.215-9300 CONTENT OF PROPOSALS (MAR 2002)**

**PROPOSAL REQUIREMENTS** (a) The technical proposal and the price/cost proposal shall be submitted in separate volumes. The technical proposal shall not contain any cost/pricing information, except for salary information provided on resumes. The technical proposal presented by the offeror to whom the award is made will be incorporated into the contract at time of award.

(b) The offeror shall submit the following information:

(1) (#) completed signed solicitation packages, including executed representations and certifications, and cost/prices in Section B and any accompanying exhibits.

(2) (#) copies of the technical proposal.

(3) (#) copies of the cost/price proposal.

(c) **TECHNICAL PROPOSAL.** Each technical proposal shall be precise, detailed, and complete as to clearly and fully demonstrate a thorough knowledge and understanding of the requirements. As a minimum, the proposal must contain sufficient detail so that it may be evaluated in accordance with the **EVALUATION FACTORS** provision, Section M.

(d) **PRICE/COST PROPOSAL.** Each price/cost proposal shall contain a breakdown of direct labor costs; direct material cost (identifying the quantity, type and unit price); subcontracting costs; overhead costs; general and administrative costs; and profit.

(1) Offers are solicited on an "all or none" basis and FAR 52.215-16, "CONTRACT AWARD (OCT 1995) ALTERNATE II (OCT 1995)" in Section L, is hereby modified. Failure to submit offers for all line items listed shall be cause for rejection of the offer.

(End of provision)

#### **5252.214-9300 BASIS FOR AWARD (MAR 2002)**

(a) The low bidder for purposes of award shall be the conforming, responsive, responsible bidder offering the lowest total price of Contract Line Item(s) (insert CLINs) CLIN prices are to be summarized from the detailed line items listed in the Schedule and any accompanying exhibits. Bids are to be submitted for each line item listed. Bids are solicited on an "all or none" basis. Failure to submit bids for all items and quantities listed shall be cause for rejection of the bid. Subparagraph (c) of FAR 52.214-10, "CONTRACT AWARD-SEALED BIDDING (JUL 1990)" does not apply to this award. (End of provision)

**5252.214-9300 BASIS FOR AWARD ALTERNATE I (MAR 2002)**

(a) The low bidder for purposes of award shall be the conforming, responsive, responsible bidder offering the lowest total price of Contract Line Item(s) (insert CLINs) CLIN prices are to be summarized from the detailed line items listed in the Schedule and any accompanying exhibits. Bids are to be submitted for each line item listed. Bids are solicited on an "all or none" basis. Failure to submit bids for all items and quantities listed shall be cause for rejection of the bid. Subparagraph (c) of FAR 52.214-10, "CONTRACT AWARD-SEALED BIDDING (JUL 1990)" does not apply to this award.

(b) Bidders are cautioned that the initial term of the contract may be for a period of less than a full year. (End of provision)

**5252.214-9300 BASIS FOR AWARD ALTERNATE II (MAR 2002).**

(a) The low bidder for purposes of award shall be the conforming, responsive, responsible bidder offering the lowest total price for Contract Line Item(s) (insert CLIN(s). CLIN prices are to be summarized from the detailed line items listed in the Schedule and any accompanying exhibits. Bids are to be submitted for each line item listed. However, the initial award will include only Contract Line Item(s) (insert CLIN(s)).

(b) Bids are solicited on an "all or none" basis. Failure to submit bids for all items and quantities listed shall be cause for rejection of the bid. Subparagraph (c) of FAR 52.214-10, "CONTRACT AWARD-SEALED BIDDING" does not apply to this award. (End of provision)